

days of the date of the notice of hearing. The ALJ considers the party's objections and decides whether to proceed with the hearing or withdraw.

(c) If the ALJ withdraws, another ALJ will be appointed to conduct the hearing. If the ALJ does not withdraw, the party may, after the ALJ has issued an action in the case, present his or her objections to the MAC in accordance with § 405.1100 *et seq.* The MAC will then consider whether the hearing decision should be revised or a new hearing held before another ALJ. If the case is escalated to the MAC after a hearing is held but before the ALJ issues a decision, the MAC considers the reasons the party objected to the ALJ during its review of the case and, if the MAC deems it necessary, may remand the case to another ALJ for a hearing and decision.

§ 405.1028 Prehearing case review of evidence submitted to the ALJ.

(a) *Examination of any new evidence.* After a hearing is requested but before it is held, the ALJ will examine any new evidence submitted with the request for hearing (or within 10 days of receiving the notice of hearing) as specified in § 405.1018, by a provider, supplier, or beneficiary represented by a provider or supplier to determine whether the provider, supplier, or beneficiary represented by a provider or supplier had good cause for submitting the evidence for the first time at the ALJ level.

(b) *Determining if good cause exists.* An ALJ finds good cause, for example, when the new evidence is material to an issue addressed in the QIC's reconsideration and that issue was not identified as a material issue prior to the QIC's reconsideration.

(c) *If good cause does not exist.* If the ALJ determines that there was not good cause for submitting the evidence for the first time at the ALJ level, the ALJ must exclude the evidence from the proceeding and may not consider it in reaching a decision.

(d) *Notification to all parties.* As soon as possible, but no later than the start of the hearing, the ALJ must notify all parties that the evidence is excluded from the hearing.

§ 405.1030 ALJ hearing procedures.

(a) *General rule.* A hearing is open to the parties and to other persons the ALJ considers necessary and proper.

(b) *At the hearing.* At the hearing, the ALJ fully examines the issues, questions the parties and other witnesses, and may accept documents that are material to the issues consistent with § 405.1018 and § 405.1028.

(c) *Missing evidence.* The ALJ may also stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing. If the missing evidence is in the possession of the appellant, and the appellant is a provider, supplier, or a beneficiary represented by a provider or supplier, the ALJ must determine if the appellant had good cause for not producing the evidence earlier.

(d) *Good cause exists.* If good cause exists, the ALJ considers the evidence in deciding the case and the adjudication period specified in § 405.1016 is tolled from the date of the hearing to the date the evidence is submitted.

(e) *Good cause does not exist.* If the ALJ determines that there was not good cause for not submitting the evidence sooner, the evidence is excluded.

(f) *Reopen the hearing.* The ALJ may also reopen the hearing at any time before he or she mails a notice of the decision in order to receive new and material evidence pursuant to § 405.986. The ALJ may decide when the evidence is presented and when the issues are discussed.

§ 405.1032 Issues before an ALJ.

(a) *General rule.* The issues before the ALJ include all the issues brought out in the initial determination, redetermination, or reconsideration that were not decided entirely in a party's favor. (For purposes of this provision, the term "party" does not include a representative of CMS or one of its contractors that may be participating in the hearing.) However, if evidence presented before the hearing causes the ALJ to question a favorable portion of the determination, he or she notifies the parties before the hearing and may consider it an issue at the hearing.